

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

RONALD ERIC KOVACH,

Plaintiff,

v.

ANNE L. PRECYTHE,

Defendant.

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No. 4:21-cv-537-ACL

MEMORANDUM AND ORDER

This matter is before the Court upon a filing submitted by plaintiff Ronald Eric Kovach, which the Court has liberally construed as a motion seeking the appointment of counsel. (ECF No. 11). The motion will be denied, and plaintiff will be given additional time to comply with the Court's August 13, 2021 order to file an amended complaint.

A *pro se* litigant has “neither a constitutional nor a statutory right to appointed counsel in civil cases.” *Patterson v. Kelley*, 902 F.3d 845, 850 (8th Cir. 2018) (citing *Phillips v. Jasper Cty. Jail*, 437 F.3d 791, 794 (8th Cir. 2006)). A district court may appoint counsel for an indigent plaintiff if it is convinced that the litigant “has stated a non-frivolous claim . . . and where the nature of the litigation is such that plaintiff as well as the court will benefit from the assistance of counsel.” *Id.* (citing *Johnson v. Williams*, 788 F.2d 1319, 1322 (8th Cir. 1986)). When determining whether to appoint counsel for an indigent plaintiff, a court considers relevant factors such as the factual complexity of the issues, the plaintiff's ability to investigate the facts and present his claims, the existence of conflicting testimony, and the complexity of the legal arguments. *Id.* (citing *Phillips*, 437 F.3d at 794).

In the instant motion, plaintiff does not establish his indigency, and the Court cannot say it is convinced that plaintiff has stated a non-frivolous claim. Plaintiff does describe being confused by a letter sent to him by the Court on August 9, 2021, and he expresses concern that he made mistakes in his original complaint. First, the purpose of the Court's August 9, 2021 letter was to inform plaintiff of his responsibilities concerning service of process, which is the process of notifying the defendants about the fact he has filed a lawsuit against them. Service of process is a necessary part of beginning the lawsuit. The Court provided plaintiff with information and forms for him to use in the event this case proceeds to that stage. This information is important, because if plaintiff files an amended complaint that survives initial review pursuant to 28 U.S.C. § 1915A, he will be responsible for effecting service of process, and the Court will provide him with relevant information at that time. Second, the Court previously explained to plaintiff the deficiencies in his complaint; and provided him with clear instructions about how to prepare the amended complaint.

In sum, the instant motion provides no basis justifying the appointment of counsel at this time; and it will be denied. However, recognizing that circumstances may change, the Court will deny the motion without prejudice, and will entertain future such motions, if appropriate, as the case progresses. Additionally, to aid plaintiff in complying with its August 13, 2021 Order, the Court will provide him with another copy of that Order and another copy of the Court's prisoner civil rights complaint form, and will give him additional time, to and including September 27, 2021, to file an amended complaint in accordance with the Court's August 13, 2021 Order.

Accordingly,

IT IS HEREBY ORDERED that plaintiff's motion for the appointment of counsel (ECF No. 11) is **DENIED** without prejudice.

IT IS FURTHER ORDERED that the Clerk mail to plaintiff a copy of the Court's August 13, 2021 Order (ECF No. 10), and a copy of the Court's prisoner civil rights complaint form.

IT IS FURTHER ORDERED that plaintiff is granted additional time, to and including September 27, 2021, to file an amended complaint in accordance with the Court's August 13, 2021 Order.

Plaintiff's failure to timely file an amended complaint may result in the dismissal of this case, without prejudice and without further notice.

Dated this 30th day of August, 2021.

s/Abbie Crites-Leoni

ABBIE CRITES-LEONI

UNITED STATES MAGISTRATE JUDGE